IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO.32 OF 2007

IN

SUIT NO.154 OF 1987

M/s.Attari Brothers .. Petitioners.

Versus

M/s.Compagnie General Maritime & Anr. .. Respondents.

Mr.K.R.Bulchandani i/b.Kamal & Co. a/w.Ms.L.K.Bulchandani for petitioners.

Ms.Kaneez Manjee i/b.Motiwalla & Co. for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5th October, 2007.

P.C.:

1. The Review Petition is taken with consent of parties forthwith as it does not require any affidavit-in-reply or detailed and further Hearing.

2. In paragraph 3 of the order passed by me on 23rd August, 2007, the figure "55 dozens of eye-liner" stands

substituted by consent to "50000 dozens of eye-liner in 1000 cartons."

3. The second error apparent on the face of the record, according to Mr.Bulchandani is that the claim of the plaintiff does not arise from the fact that the 1st defendant refused to take delivery. The 1st defendant is the vessel which was to carry the re-shipment from abroad. The vessel did not handover the re-shipped goods to the plaintiff as per the contract at the port of destination in India but the goods were diverted to Colombo and that is how the claim in the suit is made against the defendant No.1. In such circumstances, he submits that paragraph 3 ought to be read in terms aforesaid and not in the manner recorded.

4. In such circumstances, the sentence appearing in paragraph 3 : "Thus, there was no obstacle for defendant No.1 to take delivery" be deleted and is substituted with the following :-

> "Thus there was no obstacle in taking delivery of the goods duly insured with the defendant No.2."

5. In addition, the following portion be also added

to clarify the claim of the plaintiff in the suit :-

> "The 1st defendant is the vessel which was to carry the re-shipment from abroad. The vessel did not handover the re-shipped goods to the plaintiff as per the contract at the port of destination in India but the goods were diverted to Colombo and that is how the claim in the suit is made against the defendant No.1."

6. Accordingly, with the aforesaid corrections, paragraph No.3 will read as under :-

> "From a perusal of the plaint and the annexures thereto so also affidavit in lieu of examination-in-chief, it is apparent to me that the claim arises out of the fact that the plaintiff has raised a proforma invoice for 100 cases of Indian Cosmetics containing 50,000 dozens of eye-liner in 1000 cartons on a foreign party. The total amount was Rs.2,85,000/-. Plaintiffs raised invoices and, thereafter, the necessary formalities were completed in exporting the said goods. Goods were thereafter shipped and were to reach the destination. Goods were duly insured

with the defendant No.2. Bills of exchange were also raised which were duly forwarded. The consignment was also insured with defendant No.2. In substance, the claim arises out of shipment made on behalf of foreign buyer who refused to take delivery of the cargo / goods upon the ship reaching the port of destination. The claim of plaintiffs arises from the fact that all documents enabling foreign buyer to take delivery were duly supplied and forwarded. Thus, there was no obstacle in taking delivery of the goods duly insured with the defendant No.2. However, the bill of lading was endorsed by the first defendant confirming that eight cases were short shipped. The plaintiffs arranged for marine policy and also took all the steps. They also re-shipped the goods and claimed re-shipment charges to the extent of the shortages. All this has been duly confirmed by the first defendant and their agents in writing. Correspondence ensued between parties and the contents of each of letters on which reliance has been placed are proved."

7. The above error has occurred ex-facie and can be corrected from a reading of the plaint and the affidavit

in lieu of examination-in-chief. I am satisfied that their is an error apparent on the face of the Record which needs to be corrected in the interest of justice. No other corrections or alterations or additions are made. Rest of the order remains the same. Review petition is disposed of accordingly in the above modifications.

8. I am unable to accept the contention of Mr.Bulchandani that the claim for interest should be from the date of the suit and not as decreed from the date of the judgement. According to Mr.Bulchandani, this is also an error apparent on the face of the record. In my view, it is not possible to accept this submission inasmuch as the order refuses that part of the claim and grants interest from the date of decree at the rate stipulated therein. The order may be erroneous but that is not a ground to review the same.

9. Review Petition disposed off in the above terms with no order as to costs.

(S.C.Dharmadhikari, J.)